

REMARKS

By this amendment, claims 1 and 3 have been amended. Claims 1-4, 7-9, 12, 13, 15, 18, 20, and 22 are pending in the application and claims 30-31 are withdrawn. Support for the amendments to claims 1 and 3 can be found (for example) in pages 14, 21, 22, 35-36 and throughout the Specification. No new matter is added.

Reconsideration is respectfully requested in view of the above amendments and following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Applicants express their appreciation for the withdrawal of objections to the Specification and several grounds for rejection based on 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 102(e)

Claims 1-4, 7-9, 12-13, 15, 18, 20 and 22 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Curtiss et al. (US Pat. No. 6,383,496; hereinafter "the Curtiss '496 patent").

The Examiner states that Curtiss, III (US Pat. No. 6,383,496) in view of the teachings of Torreblanca and Heithoff, inherently disclose mutant bacteria that display altered DAM activity and the claims do "not require the alteration to be in the dam gene". (Office Action, para 6; emphasis original).

In arguments filed in the November 22, 2002 response, Applicants have stated that the only Curtis reference (U.S. App. Ser. No. 08/970,789, issued as US Pat. No 6,024,961) that is "prior" art over the present application "does not include any mention of the Dam gene or teach or suggest an attenuated live bacteria with an altered Dam gene." (page 6 of Amendment filed November 22, 2002).

In response to the Examiner's ground for rejection for inherency in the disclosures, Applicants amend claim 1 to specify "wherein the Dam activity is altered by a mutation in the Dam gene."

Applicants further amend claim 3 to independent form and specify *inter alia* "an attenuated form of live bacteria with a DNA adenine methylase (Dam) activity altered relative to the Dam activity of the wild-type, unaltered, pathogenic form of the live bacteria ... wherein the Dam activity is altered by the second heterologous nucleotide sequence."

The Examiner does not cite any references that disclose bacteria with altered DAM activity wherein: (i) the Dam activity is altered by a mutation in the Dam gene (independent claim 1), or (ii) the Dam activity is altered by a heterologous nucleotide sequence (independent claim 3). Since these elements of amended independent claims 1 and 3 are not disclosed in the cited art, Applicants submit that grounds of rejections under 35 U.S.C. § 102(e) have been overcome by these amendments.

Claims 2, 7-9, 12, 13, 15, 18, 20, and 22 depend from independent claim 1 and claim 4 depends from independent claim 3. For these reasons, Applicants respectfully request that rejection of claims 1-4, 7-9, 12, 13, 15, 18, 20, and 22 under 35 U.S.C. § 102(e) be withdrawn.

Rejections Under 35 U.S.C. § 112

Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner objects to the lack of antecedent basis/clarity of the "second nucleotide sequence" in claim 1 from which claim 3 originally depended.

Applicants have amended claim 3 to independent form. Therefore, any objections based on terms specified (or not) in claim 1 are moot. Withdrawal of this ground for rejection is respectfully requested.

CONCLUSION


In light of the Amendments and the arguments set forth above, Applicants earnestly believe that they are entitled to a letters patent, and respectfully solicit the Examiner to expedite prosecution of this patent application to issuance. Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

With respect to all amendments and cancelled claims, Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections and/or objections made by the Patent Office. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional application.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 220002060724.

Respectfully submitted,

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